IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 856 OF 2004

IN

SUM. SUIT NO. 2840 OF 2004

M/s. Inertia Industries Ltd. . .. Plaintiff.

vs.

M/s. Skylark Corpn.

& Ors. .. Defendants.

Mr. Rahul Oak i/by Rajesh Datar for plaintiff.

Mr. Mugdha Jadhav for defendants.

CORAM : S.U. KAMDAR, J.

DATE : 4th October, 2005.

P.C.:

. The present suit is filed in this Court after obtaining leave under clause 12 of Letters Patent. In reply to the present summons for judgment, the defendants have raised a contention that this Court has no jurisdiction. My attention has been drawn to the invoice at page 14 which shows that the plaintiffs are at Aurangabad. The defendants consignees are at Solapur and the goods are despatched from Aurangabad to Solapur. The said

invoice also further states that subject to Aurangabad jurisdiction. In the present case the suit is filed in Bombay by making false statement that the orders are placed at Mumbai and that the amount is due and payable by the defendants at Mumbai and therefore material cause of action has arisen within the jurisdiction of this Court. On enquiry I am informed by the plaintiff that the orders which are referred to are oral orders and there is no material to show that in fact the orders are placed in Mumbai and there is no further evidence that the amount is due and payable at Mumbai. The averments made in para.6A of the plaint are totally false and leave is obtained on the basis of the said averments. In my opinion, no part of cause of action has arose in Mumbai and, therefore, prima facie this Court has no jurisdiction. In my opinion, the issue of jurisdiction being going to the root of the matter, triable issue arises in the present case. In that view of the matter, the summons for judgment is dismissed. Unconditional leave to defend is granted to the defendants.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial

Causes.